No. 99-403

IN THE

Supreme Court of the United States

WILLIAM F. EARTHMAN,

Petitioner,

v.

FREDERIC B. INGRAM,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE[1]

A. Petitioner failed to raise properly and timely any federal issue in the state court proceedings.

It is undisputed that Petitioner first raised a federal issue for consideration by a state court in his petition for rehearing of the Tennessee Supreme Court's denial of Petitioner's application for permission to appeal. (*See* Earthman Pet. 12-13.) Petitioner raised no issues of federal law at trial, in his motion for a new trial filed with the state trial court, in his appeal to the Tennessee Court of Appeals, nor in his application for permission to appeal to the Tennessee Supreme Court, and there were no federal issues cognizable from the issues that were raised at those stages of the proceedings.

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1. The following abbreviations and references are used herein:

"T.R. __, __" indicates citations to volumes and pages in the technical record on appeal, which excludes pages in the transcript of the trial proceedings. The technical record consists of seven volumes numbered I through VII.

"R. __, __" indicates citations to volumes and pages in the transcript of the trial proceedings. The transcript of the trial proceedings consists of ten volumes numbered VIII through XVII.

"Ex. __" indicates exhibits introduced at trial.

Citations to pages in the petition for writ of certiorari filed by Petitioner are indicated by "Earthman Pet. __," and citations to pages in the appendix to the petition are indicated by "Earthman Pet. App. __."

Petitioner did not timely and properly present any federal issue to the state courts for decision, which is a prerequisite to a grant of review by the United States Supreme Court. Rule 14(g)(i) of the United States Supreme Court requires that a petition's statement of the case contain the following information:

> (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. . . .

Sup. Ct. R. 14(g)(i). Petitioner cannot make the required showing that the federal question presented here was timely and properly raised in state court proceedings.

Petitioner belatedly tried to engraft a federal issue onto the case by referencing a possible federal due process violation in his petition for rehearing filed with the state supreme court, but this attempt is unavailing: the United States Supreme Court has "generally refused to consider issues raised clearly for the first time in a petition

for rehearing when the state court is silent on the question." *Adams v. Robertson*, 520 U.S. 83, 117 S. Ct. 1028, 1031 n.3, 137 L. Ed. 2d 203 (1997) (citations omitted). Although the Tennessee Supreme Court, in denying Petitioner's request for rehearing, stated that it had considered the issues raised and had found them to be without merit (*see* Earthman Pet. App. 2), the Tennessee Supreme Court did not specifically discuss the federal issue belatedly raised by Petitioner. Indeed, according the petition to this Court, the Tennessee Supreme Court "failed to make a determination of that issue or explain why Earthman is not entitled to have a determination of that issue." (Earthman Pet. 3.)

In sum, Petitioner failed to raise any federal issue in a timely or proper fashion, and the petition should be denied for failing to satisfy this Court's well-established preconditions to the granting of a petition for writ of certiorari to a state supreme court.

B. The petition misrepresents and omits important facts from the record.

The foundation of the petition is a series of incomplete and misleading statements about the promissory note owned and controlled by Respondent that a state court jury ordered Petitioner to pay. At several places in his petition, Petitioner makes erroneous statements about the record of evidence concerning Respondents' ownership, control, and status as holder of the promissory note in question. (*See, e.g.*, Earthman Pet. i, 4, 7, 8, 9, 16, 18.) As the appellate record demonstrates and as the Tennessee Court of Appeals correctly stated in its opinion, the true evidence was that Respondent was the owner and holder of the note in question, and Petitioner's mischaracterization of the record raised no

valid appellate issues in this respect. (*See* Earthman Pet. App. 26-30, 38-39; R. VIII, 64-65; IX, 184-86; XVI, 1484-89; XVII, 1564-65; T.R. I, 3-6; *see also* Ex. F for identification, at 79, 84.)

Furthermore, the petition failed to disclose that Petitioner waived any objections based on the standing issue that is the basis for this petition. On the afternoon of the eighth day of a nine-day trial and for the first time during the entire life of the case, Petitioner raised a question about Respondent's standing to sue on the note in question. (R. XVI, 1389, 1405; R. XVII, 1577.) After forgoing numerous opportunities to raise the issue, Petitioner waited to raise the standing question until it was physically impossible to have the original note delivered to Tennessee before the end of the trial.[2] (R. XVI, 1389, 1405; R. XVII, 1571, 1577.)

Prior to trial and during opening arguments at trial, Petitioner's counsel raised no defenses other than the statute of limitations. On the first day of trial, Respondent introduced a copy of the note into evidence without objection (R. VIII, 64; Ex. 3) and asserted his right to payment on the note (R. VIII, 64-65; *see also* R. IX, 184-86); Petitioner later verified the accuracy of the copy of the note sued on, including his signature on it. (R. XII, 749-50.) On the second and third days of trial, when given the opportunity by the court to respond to the objection by Respondent's counsel that

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2. Respondent filed the original note with the clerk of the trial court as soon as possible after Petitioner first raised the note ownership issue (*see* T.R. VI, 806; the note remains in the record), thus eliminating any risk to Petitioner of another party obtaining the note and seeking collection on it and conclusively demonstrating Respondent's ownership and control of the note.

questions about a foreign trust were irrelevant, Petitioner's counsel never suggested that the trust was the alleged owner of the note. (R. IX, 226; R. X, 327-28, 334-36.) In his motion for a directed verdict at the close of Respondent's evidence on the fourth day of trial, Petitioner raised only the statute of limitations defense and whether Respondent had produced material evidence to support his case. (R. XI, 602-03, 605.) The trial court, in denying Petitioner's motion for a directed verdict, stated:

> Well, when a party admits — in this case, Mr. Earthman has admitted execution of the note and admitted he hasn't paid it. Then the burden shifts to him to prove a defense. All the holder of the note has to do is prove the signature and nonpayment. The defense that Mr. Earthman offers, and the only defense, is the statute of limitations; I mean, the only one for the jury to decide.

(R. XI, 606.) Petitioner's counsel did not object to the trial court's ruling and raised no issue regarding the right of Respondent to sue on the note. (R. XI, 608.)

Accordingly, when Petitioner finally raised the issue of whether Respondent had standing to sue on the note on the afternoon of the next-to-last day of trial, the trial court properly ruled that Petitioner had waived any right to challenge the standing of Respondent to sue on the note. (R. XVI, 1389, 1396, 1405; R. XVII, 1577.)

Not only did the trial court specifically grant Petitioner a hearing on the standing issue, but the Tennessee Court of Appeals devoted considerable parts of its opinion to the

standing issue raised by Petitioner. (*See* Earthman Pet. App. 24-39). Therefore, contrary to the assertions in the petition (*e.g.*, Earthman Pet. 14-15), the Tennessee courts did not deny Petitioner a hearing on the standing issue.

In sum, Petitioner resorts to an extremely partial and biased presentation of the record in his effort to formulate a question that might be of some interest to this Court. However, when the true facts and full record are considered, it becomes apparent that Petitioner was not denied any substantive rights, state or federal in origin, and that the state courts carefully and thoroughly considered all issues that were properly and timely raised by Petitioner.

REASONS FOR DENYING THE PETITION

In addition to the reasons set forth above relating to the failure of Petitioner to raise any federal issue properly and relating to Petitioner's biased statement of the case, the petition should be denied for the following reasons.

A. The state court of last resort did not decide any important federal question.

The Tennessee Supreme Court did not issue an opinion discussing the merits of any federal issue. Accordingly, as the petition acknowledges (*see* Earthman Pet. 13-18), this case does not present a conflict of state court decisions on a federal question that this Court should address nor does it present a conflict between a state court decision and a decision of this Court.

B. The petition raises no federal issue of significant or compelling interest.

This case concerned a private contract dispute between private parties litigated in a state court. The issues in the case, which were thoroughly considered by the state courts, concerned state law only. Until Petitioner's attempt to further prolong this matter by adding an allegation of deprivation of rights under the Fourteenth Amendment to the United States Constitution in his petition for rehearing to the Tennessee Supreme Court, no federal issue had ever been raised.

Petitioner's vague assertion that he was denied federal due process rights by the manner in which the Tennessee state courts ruled on his motions and appeals simply do not raise compelling federal issues. First, Petitioner had no federal Seventh Amendment right to a jury trial of this civil action in state court and, in particular, had no federal right to a jury trial on the issue of whether Respondent had standing to sue on the note in question. *See Gasperini v. Center for the Humanities, Inc.*, 518 U.S. 415, 432 & n.14, 116 S. Ct. 2211, 135 L. Ed. 2d 659 (1996) (Seventh Amendment to United States Constitution does not govern proceedings in state court). This being the case, Petitioner seeks to turn his argument that he was denied a jury trial on the standing issue into a federal due process argument and asserts that the Tennessee courts somehow deprived him of "a hearing appropriate to the nature of this case on the critical issue of Ingram's standing to sue on the note." (Earthman Pet. 15.) This assertion is plainly incorrect: the standing issue was heard and addressed by the state trial court and the state court of appeals (*see* Earthman Pet. App. 24-39; R. XVI, 1389, 1396, 1405; R. XVII, 1577), and the state supreme

court found no reason for further review of these decisions after Petitioner filed an application for appeal and a petition for rehearing on the denial of that application. Petitioner assuredly does not agree with the decisions reached by the state courts on the standing issue, but that disagreement does not present a federal question.

Second, the real question raised by Petitioner — whether Respondent had standing to sue on the promissory note in question — is solely a state law question already decided by the Tennessee courts. Tennessee law prescribes the procedure for how and when a defendant should assert that a plaintiff lacks standing to sue (*see, e.g.*, Tenn. R. Civ. P. 9.01) — a procedure which Petitioner failed to follow — and the Tennessee Court of Appeals properly applied state law to determine whether Respondent had standing to sue on the note (*see, e.g.*, Earthman Pet. App. 34-39; *see also* Tenn. R. Civ. P. 17.02 (specifically providing that capacity to sue or be sued in Tennessee courts shall be determined by the laws of Tennessee)). Moreover, the decision of the Tennessee Court of Appeals on this issue was consistent with prior Tennessee cases and with other state law decisions on similar standing issues. (*See* Earthman Pet. App. 36-37.) Indeed, the decision in this case in favor of Respondent was compelled by prior Tennessee cases holding that, if a defendant wants to contest a plaintiff's authority to sue on a note, then the defendant must in a timely manner specifically deny the plaintiff's authority to sue on the note and put the plaintiff on notice of the need to prove such authority; otherwise, the issue is waived by the defendant. *See Wright v. McLemore*, 18 Tenn. 235, 236 (1837); *Cage v. Foster*, 13 Tenn. 261, 263-64 (1833).

Finally, the cases cited by Petitioner provide no grounds for granting the petition. In *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971), the Court considered whether refusal to permit the bringing of a divorce action for failure to pay filing fees and costs constituted a federal due process violation. It was the denial of access to the courts that was at issue and not whether a state court hearing or trial had been conducted properly. In fact, the *Boddie* Court specifically noted that "[d]ue process does not, of course, require that the defendant in every civil case actually have a hearing on the merits." *Id.* at 378. The *Boddie* Court further noted that "the hearing required by due process is subject to waiver, and is not fixed in form . . . ." *Id.* 378-79. Likewise, in *McNeal v. Scott*, 154 U.S. 34, 46, 14 S. Ct. 1108, 38 L. Ed. 896 (1894), the Court simply made clear that due process requires that a state court have jurisdiction over a matter it adjudicates and that the parties be given notice of the proceeding. The Tennessee state courts indisputably had jurisdiction over this matter, and Petitioner had notice of and participated in the state court proceedings. Further, *St. Joseph Stockyards Co. v. United States*, 298 U.S. 38, 50-54, 56 S. Ct. 720, 80 L. Ed. 1033 (1936), concerned whether the legislative branch had unduly encroached on the domain of the judicial branch; the case does not stand for the broad, unlimited proposition stated in the petition that "due process requires the judicial determination of the issues" (Earthman Pet. 16).

Petitioner was not denied a hearing on the standing issue by the state courts and was not denied access to the state courts. Petitioner's disagreement with the state courts' rulings on this state law issue and Petitioner's assertion that he was not given a hearing "appropriate to the nature of the case" on this state law issue do not give rise to federal due

process violations by the state courts and do not present compelling federal questions for this Court to review. In the end, Petitioner's complaint is really that the jury did not believe his version of the facts and the state courts did not accept his legal arguments. Such a complaint does not raise a compelling federal issue and does not justify the further burdens of time, expense, and effort that would be associated with review by this Court.

C. The unique facts of this case further make the case inappropriate for review.

As the Tennessee Court of Appeals' lengthy and detailed opinion illustrates, this case presented an unusual and unique set of facts that are unlikely to re-occur, and the fact-dependent nature of the legal doctrines involved greatly limits the future relevance of this case to other fact situations. Moreover, the suggestion by Petitioner that this case may forge some new rule about the prosecution of suits on promissory notes that may have far-reaching implications (*see* Earthman Pet. 14-18) is shown to be incorrect by two important factors. First, although not acknowledged or disputed by Petitioner, this case involved a non-negotiable note in a non-commercial setting. (*See* Earthman Pet. App. 20-24.) Second, as noted above, the Tennessee Court of Appeals' decision was entirely consistent with numerous other decisions on the promissory note issues and did not break new ground. (*See* Earthman Pet. App. 36-37.) Therefore, the holdings in this case are not of general application and are not in derogation of existing law or public policy.

CONCLUSION

For the reasons stated above, Respondent respectfully submits that the petition should be denied, and the jury's verdict, which was upheld by the Tennessee Court of Appeals and Tennessee Supreme Court, should not be disturbed.

Respectfully submitted,

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